

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

FEB 16 2017

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MICHAEL ANTHONY CERNAK,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 16-72035

D.C. No. 2:03-cr-534-PMP-RJJ  
District of Nevada,  
Las Vegas

ORDER

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

The application for authorization to file a second or successive 28 U.S.C. § 2255 motion makes a prima facie showing for relief under *Johnson v. United States*, 135 S. Ct. 2551 (2015). The application is granted. *See Welch v. United States*, 136 S. Ct. 1257, 1264-68 (2016) (*Johnson* announced a new substantive rule that has retroactive effect in cases on collateral review).

The district court is authorized to proceed with the identical section 2255 motion, protectively filed in case number 2:03-cr-534-PMP-RJJ, on June 23, 2016. The motion shall be deemed filed in the district court on June 23, 2016, the date the application was filed in this court. *See Orona v. United States*, 826 F.3d 1196 (9th Cir. 2016).

The Clerk shall serve this order and the application directly on the chambers

of the Honorable Kent J. Dawson.

No further filings will be entertained in this case.